



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,869	04/19/2001	Rob Pieterse	01176/LH	6265

1933 7590 11/30/2006

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
----------	--------------

2623

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,869

Applicant(s)

PIETERSE, ROB

Examiner

Michael Van Handel

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is responsive to an Amendment filed 11/01/2006. Claims **1, 2, 5, 6, 9, and 10** are pending. Claims **1 and 5** are amended. Claims **3, 4, 7, and 8** are canceled.

Response to Arguments

1. Applicant's arguments regarding claims **1 and 5**, filed 11/01/2006, have been fully considered, but they are not persuasive.

Regarding claims **1 and 5**, the applicant argues that Logan et al. fails to disclose periodically replacing files with files having the same genre. The examiner respectfully disagrees. As noted in the Office Action mailed 7/14/2006, Logan et al. discloses a player that processes a usage file at the end of each session and tags each program segment which has been played as being eligible for replacement to make room for incoming segments (col. 13, l. 45-52). Logan et al. also discloses that when programs are included in a current schedule which are of particular interest, the subscriber may assign a priority value to the scheduled program and, in that way, inform the host that the user has an interest in receiving more programming in the same subject matter categories in which the identified program is classified (col. 7, l. 50-55). Logan et al. also discloses serialized sequences of programs, wherein a given program segment represents an episode in a series (col. 18, l. 10-18). Logan et al. further discloses that when a subscriber selects and plays a given program segment, as indicated by the usage log, without having expressly selecting the entire series, the host then adds the next installment to the next proposed

Art Unit: 2623

session (col. 18, l. 22-46). Logan et al. also discloses that the serialization mechanism can also be used to provide sequential presentation relationships between related programs (for example, a news story about the America's Cup yacht races)(col. 18, l. 47-55). Since Logan et al. discloses replacing program segments with segments of the same class or category, the examiner maintains that Logan et al. meets the limitation "wherein the periodically replacing part of the collection of selected files by files selected once again from the database includes identifying the part of the collection to be replaced as belonging to a genre and replacing the part of the collection with the genre with files identified as belonging to the genre," as currently claimed.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. in view of Cluts.

Referring to claims 1 and 5, Logan et al. discloses a system for the distribution of audio files, comprising:

- a central database with audio files (col. 4, l. 21-25 & Fig. 1);
- local processing means for processing and playing the audio files (col. 3, l. 32-36);
- a transmission network for the transmission of the audio files from the central database to the local processing means (col. 6, l. 60-67 & col. 7, l. 1-3);

Art Unit: 2623

- a processor for selecting a collection of files from the database by means of a selection algorithm and storing that selection in a selection file (col. 5, l. 37-49; col. 10, l. 38-45; & col. 20, l. 31-35), as well as for transferring, via the transmission network to the local processing means of a subscriber, replicas of both the selection file and the selected files themselves (col. 5, l. 37-49), the local processing means playing the selected files via playing means under control of the selection file (col. 7, l. 7-12 & col. 10, l. 38-48), wherein the processor selects, on the basis of one or more selection algorithms, different collections of files and stores these selections in different selection files (col. 5, l. 37-49 & col. 20, l. 31-34), which are transferred to the local processing means via the transmission network, the local processing means comprising a local selection device for selecting, according to the desire of the subscriber, one of those different selection files (col. 7, l. 22-25); wherein the local selection device stores consecutive choices made by the subscriber, in a log file (col. 7, l. 41-45), the processor reading out the selections stored in the local selection device and periodically replacing part of the collection of selected files by files selected once again from the database (col. 13, l. 45-52); and wherein the periodically replacing part of the collection of selected files by files selected once again from the database includes identifying the part of the collection to be replaced as belonging to a genre and replacing the part of the collection with the genre with files identified as belonging to the genre (col. 7, l. 50-55 & col. 18, l. 10-18, 22-55).

Logan et al. does not disclose distributing video files. Cluts discloses a continuous media server (CMS) file storage and delivery system that can manage on-demand access to stored audio and

Art Unit: 2623

video data (col. 6, l. 56-63). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Logan et al. to include the delivery of video data, such as that taught by Cluts in order to provide a user with more entertainment options.

Referring to claims 2 and 6, the combination of Logan et al. and Cluts teaches the system according to claims 1 and 5, respectively, wherein the processor periodically replaces, under control of a refreshing algorithm, part of the collection of the selected files by files which are selected once again from the database (Logan et al. col. 13, l. 29-44, 48-52).

Referring to claims 9 and 10, the combination of Logan et al. and Cluts teaches the system according to claims 1 and 5, respectively, wherein the files that are refreshed have been actually selected by the subscriber (the examiner notes that the program segments that the subscriber has played are tagged for replacement)(col. 13, l. 48-52).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2623

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571-272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVH


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600